



**MICHIGAN
CHAMBER
OF
COMMERCE**



November 16, 2005

The Honorable Terri Lynn Land
Secretary of State
Executive Office
Treasury Building – First Floor
430 W. Allegan Street
Lansing, MI 48918

Dear Secretary Land:

Re: Declaratory Ruling or Possible Interpretive Statement Request

Pursuant to Section 15(1)(e) and (2) of the Michigan Campaign Finance Act (MCFA), P.A. 388 of 1976, as amended, MCL 169.201 et seq. (the "Act") and Rule 169.6 of the Michigan Administrative Code, this is a request for a Declaratory Ruling as to the applicability of the Act. Please note that Section 15(2) of the Act indicates that if the Michigan Department of State does not issue a Declaratory Ruling, the Michigan Department of State must at least issue an Interpretive Statement providing an informational response to the questions presented within the same time limitations applicable to a Declaratory Ruling.

BACKGROUND

In an Interpretive Statement issued to Robert S. LaBrant dated November 14, 2005, the Michigan Department of State confirmed the following:

The Corley and Sponsler declaratory rulings remain in effect and are binding on the department. Pursuant to those rulings, the department interprets the term "expenditure" to include the costs associated with collecting and delivering contributions to a committee. A payroll deduction system is one method of collecting and delivering contributions.

"Expenditure" is defined in Section 6 of the MCFA to include the transfer of anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of or opposition to the nomination or election of a candidate. Pursuant to Section 54(1) of the statute, a corporation is prohibited from making expenditures or contributions in candidate elections except as authorized by Section 55 of the MCFA. Since 1978, Section 55 has been interpreted as allowing a corporation to make an expenditure for the establishment, administration, and solicitation of contributions to a single separate segregated fund. [See OAG 1977-1978, No 5344, p 482 (July 20, 1978)] Thus, a corporation may not make expenditures to benefit another separate segregated fund, including a fund established by a labor organization.

The Honorable Terri Lynn Land
November 16, 2005
Page Two

If a corporation through a payroll deduction system transfers anything of ascertainable monetary value for goods, materials, services or facilities to a committee other than its own separate segregated fund, it has made an expenditure that is prohibited by Section 54 of the MCFA. If the value of those goods, materials, services or facilities can be ascertained and the corporation is reimbursed, there is no corporate expenditure because there is no transfer of value. (Emphasis added.)

Based on the forgoing ruling, the following questions for clarification arise.

QUESTION ONE

Please confirm that all expenses incident to a corporation's "costs associated with collecting and delivering contributions" to a labor organization's separate segregated fund includes the cost of "using corporate time, property or other resources." See Interpretive Statement issued to Margaret Ayres dated April 14, 1993. Please further confirm that such expenses include the corporation's cost to implement, operate and supervise a payroll deduction system which include, but are not limited to the following:

1. The cost of all materials, property or other resources for the solicitation of contributions to the labor organization's separate segregated fund.
2. The cost of all corporate employees and agents (salary, benefits, etc.) for that portion of such corporate employee's or agent's time incident to the implementation, operation, or supervision of a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund.
3. Since a corporation's responsible employees could become guilty of a felony if the requirements of the Act are not precisely followed (see MCL 169.254(4)), all costs incurred by the corporation to confirm the corporation's and the labor organization's compliance with all rules relating to a payroll deduction plan for a separate segregated fund, including but not limited to, any accounting or legal expenses.
4. The cost of any other corporate resources utilized incident to a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund.

QUESTION TWO

Please confirm that there must be an actual reimbursement from the labor organization to the corporation for all "costs associated with collecting and delivering contributions" to benefit a payroll deduction plan for the solicitation of contributions to the labor organization's separate segregated fund. In other words, the corporation may not absorb or

The Honorable Terri Lynn Land
November 16, 2005
Page Three

“forgive” such reimbursement costs as part of a collective bargaining agreement or some other type of agreement. (Illegal contracts are void.) See Cashin v. Pliter, 168 Mich 386, (1912); In re Reidy’s Estate, 164 Mich 167, (1910); Kukla v. Perry, 361 Mich 311, (1960); Stokes v. Millen Roofing Co., 466 Mich 660, (2002); Bilt-More Homes, Inc. v. French, 373 Mich 693, (1964).

Similarly, (Contracts that offend public policy may be declared illegal and void.) See Cook v. Wolverine Stockyards Co., 344 Mich 207, (1955); McNamara v. Gargett, 68 Mich 454, (1888); Sands Appliance Service, Inc. v. Wilson, 463 Mich 231, (2000).

QUESTION THREE

Please confirm that the reimbursement requested by the corporation is prima facie evidence of all of the corporation’s “costs associated with collecting and delivering contributions” to benefit a payroll deduction plan for the solicitation of contributions to the labor organization’s separate segregated fund.

QUESTION FOUR

Please confirm that if the labor organization refuses, for any reason, to reimburse the corporation in a timely manner for expenses incident to a payroll deduction plan for the solicitation of contributions to the labor organization’s separate segregated fund, that the corporation must discontinue making any additional expenses to benefit the separate segregated fund in order to avoid violation of Section 54 of the Act.

QUESTION FIVE

A corporation that incurs expenses incident to its “costs associated with collecting and delivering contributions” to benefit a payroll deduction plan for the solicitation of contributions to the labor organization’s separate segregated fund is not in the business of such activity. Therefore, what is a reasonable time frame in which a labor organization must reimburse a corporation for such expenses? Since failure to make such a reimbursement to the corporation constitutes a “contribution” under the Act, and the statutory time frame to avoid the making of a prohibited contribution is 30 days (see MCL 169.204(3)(c)), is this 30 days a reasonable time frame for reimbursement?

The Honorable Terri Lynn Land
November 16, 2005
Page Four

To the extent that the Michigan Department of State declines to issue a Declaratory Ruling as to the above-referenced questions, please issue an Interpretive Statement in accordance with Section 15(2) of the Act.

Thank you for your consideration of this request. If you have any questions or require any additional information whatsoever, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. LaBrant", with a stylized flourish at the end.

Robert S. LaBrant
Senior Vice President, Political Affairs
and General Counsel